

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDRE L. JORDAN, a/k/a RONALD MAIDEN,

Defendant-Appellant.

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UNPUBLISHED

March 3, 1998

No. 188798

Detroit Recorder's Court

LC No. 92-013089-FH

Before: Griffin, P.J., and Holbrook, Jr. and Neff, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of delivery of fifty grams or more, but less than 225 grams, of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii), and his sentence of ten to twenty years' imprisonment. We affirm.

James Lightfoot, a Detroit police officer, was working undercover at the corner of Tillman and Myrtle Streets in Detroit when he observed Robert Dearmin standing at the driver's side window of a Ford Explorer, driven by defendant, counting a large amount of currency. Dearmin handed the money to defendant and then walked around the Explorer to the passenger's side window. Defendant then reached in front of the passenger in the Explorer and handed Dearmin plastic baggies. Lightfoot contacted the arrest team by radio, and the team then approached defendant's Explorer in two police vans. As the vans approached, Dearmin ran. Andrew White, a Detroit police officer, chased Dearmin and recovered plastic bags containing 54.81 grams of cocaine which Dearmin had thrown into a dumpster as he ran.

Dearmin and defendant were tried together. Dearmin testified at trial and denied that he was carrying cocaine or that he had thrown cocaine into a dumpster.

I

Defendant argues first that the circumstantial evidence presented at trial was insufficient to convict him of delivery of cocaine. Defendant claims that the prosecution failed to prove beyond a

reasonable doubt that the plastic bag which Lightfoot saw defendant give to Dearmin was the same bag of cocaine that White later observed Dearmin throw into a dumpster.

A prosecutor need not negate every reasonable theory of innocence, but must only prove his own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *People v Quinn*, 219 Mich App 571, 574; 557 NW2d 151 (1996). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Further, circumstantial evidence and the reasonable inferences which arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996).

Viewing the facts in the light most favorable to the prosecution, a rational trier of fact could conclude that the plastic bags Lightfoot saw defendant hand to Dearmin were the same bags of cocaine that White saw Dearmin throw into a dumpster. Defendant asserts that the evidence reveals that the officers lost sight of Dearmin at times during their pursuit of him and, therefore, the contents of the bag could have been altered during the chase. However, given the short time frame between the time Lightfoot saw defendant and Dearmin exchange the money and the plastic bags, and the time that White saw Dearmin throw the plastic bags into the dumpster, the jury could logically conclude that Dearmin threw the same bags into the dumpster that defendant had just handed to him.

Defendant also asserts that in order for the jury to infer that the bag seized from the dumpster was the same bag handed to Dearmin by defendant, the jury impermissibly built one inference on another. Findings of fact may be based on inferences, but the inferences must be drawn from established facts. *People v Atley*, 392 Mich 298, 315; 220 NW2d 465 (1974). An inference may not be built on an inference. *Id.* However, an inference is not to be rejected simply because it depends on another reasonable inference. *People v Young*, 114 Mich App 61, 64; 318 NW2d 606 (1982). The question is merely whether the total evidence, including reasonable inferences, when put together is sufficient to warrant a jury to conclude that defendant is guilty beyond a reasonable doubt. *Id.*

In this case, the total evidence supports the jury's conviction of defendant. As noted above, based on the short time frame between the time Lightfoot saw defendant hand a plastic bag to Dearmin and the time that White saw Dearmin throw a plastic bag of cocaine into a dumpster, the jury could reasonably conclude that the bags were one and the same. Therefore, viewing the facts in the light most favorable to defendant, the jury could reasonably conclude that the prosecutor presented sufficient evidence to prove beyond a reasonable doubt that defendant delivered to Dearmin 54.81 grams of cocaine.

## II

Next, defendant argues that he was denied his right to a fair trial because of improper remarks made by the prosecutor in her closing argument. However, defendant failed to object at trial to the remarks at issue. Appellate review of allegedly improper remarks is precluded if the defendant fails to timely and specifically object unless an objection could not have cured the error or a failure to review would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557

(1994). After a careful review of the record, we find that no miscarriage of justice will result from our refusal to review the merits of defendant's claim.

### III

Finally, defendant contends that the trial court erred by failing to sentence defendant below the statutory, mandatory minimum. Defendant claims that he presented substantial and compelling reasons to depart downward from the minimum ten-year sentence.

Defendant was convicted of delivery of fifty grams or more, but less than 225 grams, of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). A person who violates this statute, "is guilty of a felony and shall be imprisoned for not less than 10 years nor more than 20 years." *Id.* A mandatory minimum sentence imposed by statute is presumably valid and proportionate. *People v Williams*, 189 Mich App 400, 404; 473 NW2d 727 (1991). The trial court may depart downward from the mandatory ten-year minimum sentence where there are substantial and compelling reasons to do so. *People v Perry*, 216 Mich App 277, 279-280; 549 NW2d 42 (1996). In *People v Fields*, 448 Mich 58, 77; 528 NW2d 176 (1995), our Supreme Court approved the following "short, nonexclusive list of factors" for the purpose of evaluating whether a departure from the mandatory minimum is warranted: (1) the defendant's prior record, (2) the defendant's age, and (3) the defendant's work history. The Court also stated that factors arising after the defendant's arrest should be assigned the same weight as preexisting factors. *Id.*

Review of the record indicates that defendant is a young man, and the amount of cocaine he delivered was only 4.81 grams over the amount necessary to expose him to a ten-year minimum sentence. However, defendant has a prior drug-related conviction, no work history, and failed to appear as instructed for sentencing following his conviction. The trial court's determination that there were no substantial and compelling reasons to sentence defendant below the mandatory minimum was not clearly erroneous.

Affirmed.

/s/ Richard Allen Griffin  
/s/ Donald E. Holbrook, Jr.  
/s/ Janet T. Neff